IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 19656 of 2004

Between:

Goli Vishwanatham, s/o Mallesham, aged 61 years,
r/o 24-179, Shivajinagar, Khanpur Village, Adilabad District.

..... PETITIONER

AND

1 The District Panchayat Officer, Adilabad, Adilabad District.
2 Gram Panchayat, Khanapur rep., by its Secretary, Khanapur, Adilabad District.
3 The Station House Officer, Khanapur, Adilabad District.
4 Quthbuddin @ Abbu, s/o Shaik Ahmed, aged 40 years,
r/o Thimmapur-Khanapur, Mogulpura, Angadibazar Mandal,
Khanapur, Adilabad District.
5 M.Pratap Rao, s/o M.Hanumantha Rao, aged 40 years,
r/o Dilwarpur Mandal, Khanapur Village, Adilabad District,
presently residing at Swapnalok Complex, Flat No.103, Warangal.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, direction, order one in the nature of writ of mandamus declaring that a) The Action of the respondent Nos.1 to 3 in not complying with the Government Telegram No.101966/Pts.IV/A/2 2004-1, dated 6-10-2004 as illegal and arbitrary and b) further declare that the respondent Nos.4 and 5 cannot raise any structure nor can the respondent Nos.1 to 5 can create any hurdle or obstruction to the petitioner in having the benefit of order dated 6-10-2004 and c) further declare that action of the respondent No.3 in using force against the petitioner from enjoying his own properties in violative of Article 21 and 300A of the Constitution of India.

Counsel for the Petitioner: MR.M.SURENDER RAO, Advocate.

Counsel for the Respondent No1: Govt. Pleader for Panchayat Raj & Rural Dev.

Counsel for the respondent No.2: Smt. Jyothi Eswar, SC for Gram Panchayat

Counsel for the Respondent Nos.4 and 5: MR. R.RAGHUNANDAN

The Court at the admission stage made the following:

Oral Order:

Heard the learned counsel for the petitioner and also learned counsel for respondents 4 and 5.

Petitioner instituted a suit—O.S.No.92 of 2004 and also filed I.A.No.253 of 2004 for injunction restraining the respondents 4 and 5 herein, who are defendants in the suit, from removing the tin shed measuring 13'x45' in H.No.7-71 (old); H.No.24-179 (new) with open space measuring 8139.66 sq. ft. situated at Thimmapur-Khanapur village. Respondents 4 and 5 herein filed counter to the said I.A., in which it is stated that they have constructed the mulgies jointly leaving open place in the eastern side of the mulgies for construction of steps. Against granting of permission in favour of respondents 4 and 5 petitioner filed an appeal before the District Panchayat Officer and the same was dismissed on 27-09-2004 stating that when the matter is already sub-judiced in the civil court it is not desirable for him to interfere with the same. Aggrieved by the same petitioner carried the matter before the Government, who by order dated 06-10-2004 kept the permission granted in favour of respondents in abeyance. Meanwhile, it appears that on a compliant made by respondent No.4, Khanapur police registered FIR No.98/2004 for the offence under Sections 143, 147, 427, 451, 506 (ii) r/w 149 IPC against the petitioner and others and they were produced before the Judicial First Class Magistrate, Nirmal with a request to send them to judicial custody for a period of 15 days to complete the investigation. Against which petitioner filed the present writ petition contending that the police are interfering in civil matters; petitioner and his family members are house arrested and there is no access to move out from his house in view of construction made by the respondents 4 and 5. It is also contended that once the Government kept in

abeyance the permission granted to respondents 4 and 5, the respondents 1 to 3 are under obligation to implement the order passed by the Government and they cannot create any hurdle or obstruction to the petitioner in having the benefit of order dated 06-10-2004.

Learned counsel for the petitioner while reiterating the contentions raised in the writ petition submits that while allowing respondents 4 and 5 to make construction, petitioner is prevented from access to the main road and he has no way and he is confined to house.

On the other hand, learned counsel for respondents 4 and 5 contends that petitioner is having access on the other side of the house, but he wants to deprive them of the property purchased where they put up mulgies after obtaining necessary permission.

The very fact of lodging a complaint with the police discloses serious offence for which the police are under obligation to register a crime and investigate into the matter. In that process, police arrested the petitioner and others and produced before the Judicial First Class Magistrate, Nirmal. In view of the same, it cannot be said that the police are interfering with the civil matters and preventing the petitioner from enjoying the property. If the construction so made by the respondents 4 and 5 in any way deprives the rights of the petitioner, the proper remedy is to move an application in the pending suit in the civil court including police protection, if any, to protect his rights.

In view of the same, I see no grounds to entertain the writ petition and it is accordingly dismissed. No costs.

_____ A.GOPAL REDDY, J.

28-10-2004

Murthy

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The District Panchayat Officer, Adilabad, Adilabad District.
2 Gram Panchayat, Khanapur rep., by its Secretary, Khanapur, Adilabad District.
3 The Station House Officer, Khanapur, Adilabad District.
4. 2CCs to the Govt. Pleader for Panchayat Raj, High Court

Buildings, Hyderabad (OUT)

5.Two CD copies.